Remarks

Claims 1, 5, 7-24, 28, and 30-54 remain in this application. Claims 1 and 24 are amended to replace the transitional phrase "comprising" with "consisting essentially of." Claims 1 and 24 are amended to state that the protein stabilizing agent is a high methoxyl pectin. Support for these amendments can be found in canceled claims 2-4 and 25-27, respectively. Claims 1 and 24 are amended to state that the protein material of (B) is a soybean protein material. Support for these amendments can be found in canceled claims 6 and 29, respectively. Claims 1 and 24 are amended to state that the R^1, R^2, and the R^3 groups of component (C) are aliphatic groups wherein the aliphatic groups are the alkyl, alkenyl and alkynyl groups, wherein the alkyl groups are tridecyl, heptadecyl, and octyl, the alkenyl groups having one double bond are heptenyl, nonenyl, undecenyl, tridecenyl, heptadecenyl, heneicosenyl; the alkenyl group having 2 double bonds is 8,11-heptadecadienyl and the alkenyl group having 3 double bonds is 8,11,14-heptadecatrienyl. Support for this amendment can be found in the present specification on page 13 line 29 to page 14 line 2. Claims 7 and 30 are amended so as not to depend from canceled claims 6 and 29, respectively.

Rejection Under 35 USC §102

Claims 1-3, 5, 6, 9, 15, and 22 were rejected under 35 USC §102(b) as being anticipated by van den Hoven (US 5,066,509).

The van den Hoven reference relates to the preparation of a stable dairy liqueur which is storable in cooled and uncooled conditions for a considerable time after a bottle has been opened, without the occurrence of oxidation flavor or fat separation when a fat used. The fats used are fats that contain mainly saturated fatty acid residues having 6-12 carbon atoms. In col. 3 lines 43-48, van den Hoven teaches fatty acid residues having more than 12 carbon atoms as well as unsaturated fatty acids are nearly completely absent. In the present claims 1 and 24, the R^1, R^2 and R^3 groups are amended to state that the aliphatic groups are the alkyl, alkenyl and alkynyl groups wherein the alkyl groups are tridecyl, heptadecyl, and octyl, the alkenyl groups having one double bond are heptenyl, nonenyl, undecenyl, tridecenyl, heptadecenyl, heneicosenyl; the alkenyl group that hs 2 double bonds is 8,11-heptadecadienyl and the alkenyl group that contains 3 double bonds is 8,11,14-heptadecatrienyl. Since van den Hoven teaches away from the present claims, as amended, the present claims are no longer anticipated by van den Hoven. Further, van

den Hoven does not teach the use of soybean protein as per amended claim 1. The only proteins taught in van den Hoven are milk proteins and dairy whey proteins. The present invention does not employ milk proteins or dairy whey proteins. In present claim 1, as amended, the acid beverage composition consists essentially of components (A), (B), (C), and (D). Milk proteins and dairy whey proteins are excluded from the present invention by the use of the transitional phrase "consisting essentially of." Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 1, 2, 6, 9, 10, 14, 15, and 22 were rejected under 35 USC §102(b) as being anticipated by Nakayama et al. (US 6,287,623).

Nakayama et al. relate to the preparation of a protein-containing acidic food and drink. Nakayama et al. teach the preparation of a beverage that contain at a minimum the following components: a suitable protein usable in foods, drinks and medicines, water, an edible fat and oil, an emulsifier, a water-soluble polysaccharide (pectin), and water-soluble vitamins. The present invention has never used emulsifiers or vitamins. In present claim 1, as amended, the acid beverage composition consists essentially of components (A), (B), (C), and (D). Claim 1 is amended to exclude emulsifiers and vitamins by the use of the transitional phrase "consisting essentially of." Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 16 and 17 were rejected under 35 USC §102(b) as being anticipated by Nakayama et al. as further evidenced by Firestone. Firestone is cited for its teaching to the oleic acid content of soybean oil and rapeseed oil that is employed in Nakayama et al. As stated above in the rejection of claims 1, 2, 6, 9, 10, 14, 15, and 22 as being anticipated by Nakayama et al., Nakayama et al. relate to the preparation of a protein-containing acidic food and drink. Nakayama et al. teach the preparation of a beverage that contain at a minimum the following components: a suitable protein usable in foods, drinks and medicines, water, an edible fat and oil, an emulsifier, a water-soluble polysaccharide (pectin), and water-soluble vitamins. The present invention has never used emulsifiers and vitamins. In present claim 1, as amended, the acid beverage composition consists essentially of components (A), (B), (C), and (D). Claim 1 is amended to exclude emulsifiers and vitamins by the use of the transitional phrase "consisting

essentially of." Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 1-3, 5-10, 14, 15, 22, and 23 were rejected under 35 USC §102(b) as being anticipated by Patel et al. (US 6,811,804).

Patel et al. relate to a shelf stable, ready-to-drink (RTD), soy/juice beverage useful for providing phytochemicals from soy, fruit and vegetable juices to a health conscious population. In the third paragraph in the Background of the Invention, Patel et al. state that phytochemicals include isoflavones. The Patel et al. RTD juice is enriched with a soy protein material such that the enriched juice provides phytochemicals. In col. 3 line 60 to col. 4 line 7, Patel et al. teach:

> Isoflavone compounds are associated with the inherent bitter flavor of soybeans. Consequently, in the production of commercial products, such as isolates and concentrates, the focus has been traditionally to remove these materials. For example, in a conventional process for the production of a soy protein isolate, in which soy flakes are extracted with an aqueous alkaline medium, much of the isoflavones are solubilized in the extract, and remain solubilized in the whey, which is usually discarded following acid precipitation of the protein to form an isolate. Residual isoflavones left in the acid precipitated protein isolate are usually removed by exhaustive washing of the isolate. (Emphasis added)

The Patel et al. process has been modified to maintain and enrich the isoflavone content of the vegetable isolates, concentrates, protein fiber and whey. In the present application, a soy protein isolate is prepared that utilizes a process wherein isoflavones are removed or significantly diminished from the product.

Patel et al. teach that soy protein viscosity is related to the degree of hydrolysis of the soy protein material. The preferred degree of hydrolysis is less than 15%. However, one would not take the teachings of the Patel et al. degree of hydrolysis to arrive at the present invention. This is because the Patel et al. soy protein material also must possess a photochemical content. Patel et al. further teach that conventional processes for the production of soy protein isolate have very low isoflavone contents because of the fact that isoflavones are water soluble and in conventional processes, the whey portion which contains the isoflavones is discarded.

Patel et al. teach the preparation of a beverage employing a soy protein having an isoflavones level of from 0.5 mg isoflavone per gram of soy protein, a stabilizing agent and vegetable/fruit juices. The pH of the beverage is about 4.

Patel et al. is directed to a beverage containing at a minimum three components of (1) protein, (2) carbohydrates and (3) supplemented vitamins and calcium. The inclusion of a fat is optional. The protein system provides from about 10% to about 30% of the total calories of the beverage, preferably from about 13% to about 25% of the total calories of the beverage. The carbohydrate system provides from about 70% to about 90% of the total calories of the product, preferably from about 75% to about 87% of the total calories of the beverage. The supplemented vitamins and calcium system provides at least 10% of the RDI of one or more vitamins in a single serving and is fortified from about 10% to 70% of the RDI for in a single serving. Following the teachings of Patel et al. does not give the present invention.

The present invention does not employ a supplemented vitamins and calcium system. Further the present invention does not employ a soy protein having an enriched phytochemical content. In present claim 1, as amended, the acid beverage composition consists essentially of components (A), (B), (C), and (D). A supplemented vitamins and calcium system is excluded from the present invention, as are phytochemicals. Claim 1 is amended to exclude a supplemented vitamins and calcium system by the use of the transitional phrase "consisting essentially of." Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 1-3, 5, 6, 22, and 23 were rejected under 35 USC §102(b) as being anticipated by Sass et al. (US 6,413,561).

Sass et al. relate to an acid beverage with improved stability. The beverage contains at least one fat, one hydrocolloid, one milk protein, calcium and magnesium ions, at a pH of 3.5 to 4.5. It is noted within Sass et al. that there is no teaching to the use of soybean protein as per amended claim 1. There is also no teaching of a high methoxyl pectin as one of the hydrocolloids as per amended claim 1. Further, claim 1 is amended such that the acid beverage composition consists essentially of; components (A), (B), (C), and (D). A milk protein is excluded from the present invention by the use of the transitional phrase "consisting essentially of." Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Rejection Under 35 USC §103(a)

Claims 1-3, 5-26, 28-46, 49, and 50-54 were rejected under 35 USC §103(a) as being unpatentable over Patel et al. (US 6,811,804).

As discussed above, Patel et al. is directed to a beverage containing at a minimum three components of (1) protein, (2) carbohydrates and (3) supplemented vitamins and calcium. The inclusion of a fat is optional. The protein system provides from about 10% to about 30% of the total calories of the beverage, preferably from about 13% to about 25% of the total calories of the beverage. The carbohydrate system provides from about 70% to about 90% of the total calories of the product, preferably from about 75% to about 87% of the total calories of the beverage. The supplemented vitamins and calcium system provides at least 10% of the RDI of one or more vitamins in a single serving and is fortified from about 10% to 70% of the RDI for in a single serving.

One would not turn to the teachings of Patel et al. to arrive at the present invention of claims 1 and 24, as amended. Applicants have amended claims 1 and 24 to state that the invention consists essentially of (A), (B), (C), and (D).

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1) and/or (2) above, as Patel et al. fail to teach or suggest all of the claim limitations of Applicants' claim 1 and 24, as amended. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 4 and 27 are rejected were rejected under 35 USC §103(a) as being unpatentable over Patel et al. as further evidenced by Firestone as applied to claims 1-3, 5-10, 14, 15, 22-26, 28-48, and 50-54 above, and further in view of Huang (EP 1,338,210).

The teachings of Patel et al. and its deficiencies are discussed above.

Huang teaches a protein stabilizing agent composition for stabilizing protein in an aqueous acidic liquid comprising both a high methoxyl pectin and a propylene glycol alginate.

Both claims 4 and 27, now canceled, have been incorporated into claims 1 and 24, respectively. Combining Patel et al. with Huang, as urged in the Office Action, does not render the present claims as obvious.

In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1) and/or (2) above, as the combination of Patel et al. and Huang fail to teach or suggest all of the claim limitations of Applicants' independent claims 1 and 24, as amended.

Claims 1-3, 5, 6, 11-26, 28, 29, and 32-54 were rejected under 35 USC §103(a) as being unpatentable over Sass et al. as further evidenced by Firestone.

Sass et al. relate to an acid beverage with improved stability. The beverage contains at least one fat, one hydrocolloid, one milk protein, calcium and magnesium ions, at a pH of 3.5 to 4.5. It is noted within Sass et al. that there is no teaching to the use of soybean protein as per amended claim 1. There is also no teaching of a high methoxyl pectin as one of the hydrocolloids as per amended claim 1. Further, claim 1 is amended such that the acid beverage composition consists essentially of; components (A), (B), (C), and (D). A milk protein is excluded from the present invention by the use of the transitional phrase "consisting essentially of." Reconsideration and withdrawal of this ground of rejection is respectfully requested.

One would not turn to the teachings of Sass et al. to arrive at the present invention of claims 1 and 24, as amended. Applicants have amended claims 1 and 24 to state that the invention consists essentially of (A), (B), (C), and (D).

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suggest all of the claim limitations of Applicants' claim 1 and 24, as amended. Reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claims 4 and 27 are rejected were rejected under 35 USC §103(a) as being unpatentable over Sass et al. as further evidenced by Firestone as applied to claims 1-3, 5, 6, 11-26, 2829, and 32-54 above, and further in view of Huang (EP 1,338,210).

The teachings of Sass et al. and its deficiencies are discussed above.

Huang teaches a protein stabilizing agent composition for stabilizing protein in an aqueous acidic liquid comprising both a high methoxyl pectin and a propylene glycol alginate.

Both claims 4 and 27, now canceled, have been incorporated into claims 1 and 24, respectively. Combining Sass et al. with Huang, as urged in the Office Action, does not render the present claims as obvious.

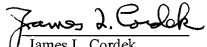
In order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under (1) and/or (2) above, as combination of Sass et al. and Huang fail to teach or suggest all of the claim limitations of Applicants' independent claims 1 and 24, as amended.

For the foregoing reasons, it is submitted that the present claims are in condition for allowance. The foregoing remarks are believed to be a full and complete response to the outstanding office action. Therefore favorable reconsideration and allowance are respectfully requested. If for any reason the Examiner believes a telephone conference would expedite the prosecution of this application, it is respectfully requested that he call Applicant's representative at 314.982.2409.

If any additional fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-0421.

Respectfully submitted,
SOLAE, LLC

Date: July 17, 2007



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